

A ZEDELTA SDN BHD v. MAYLAND SUPREME SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR

ALIZA SULAIMAN J

[ORIGINATING SUMMONS NO: WA-24C-143-07-2022]

9 JANUARY 2023

B

Abstract – *The remedy under s. 30 of the Construction Industry Payment and Adjudication Act 2012 ('CIPAA') could be invoked by the winning party in an adjudication proceeding upon satisfaction of the conditions therein. When the written request for direct payment is received by the principal from the winning party, and there is money due and payable by the principal to the party who lost in the adjudication proceedings, the principal is under a mandatory obligation to pay the adjudicated amount directly to the winning party in the absence of proof that no payment is due and payable to the losing party.*

C

D

CONSTRUCTION LAW: *Adjudication decision – Enforcement of – Failure by main contractor to pay adjudicated sum to sub-contractor – Claim for direct payment of adjudicated amount from principal – Whether employer 'principal' of main contractor – Whether fulfilled conditions under s. 30 of Construction Industry Payment and Adjudication Act 2012 ('CIPAA') – Whether written request served accordingly to principal – Whether principal proved money not due to main contractor when written request received – Whether principal mandatorily obliged to pay under s. 30(3) of CIPAA*

E

WORDS & PHRASES: *'adjudicated amount' – Construction Industry Payment and Adjudication Act 2012, s. 30 – Whether include both interest and costs awarded in adjudication decision*

F

The defendant, who was in the business of real property and housing development and the employer of a housing project, appointed CR Sea (Malaysia) Sdn Bhd ('CR Sea') as the main contractor for the project. CR Sea referred to the architect instruction and, on behalf of the defendant, confirmed the award of 'The Supply, Delivery, Installation, Testing & Commissioning and Maintenance & Servicing of Electrical Services' for the project to the plaintiff for the firm price sum of RM15 million ('sub-contract'). When the plaintiff and CR Sea later became entangled in a dispute, the plaintiff commenced an adjudication proceedings against CR Sea pursuant to the Construction Industry Payment and Adjudication Act 2012 ('CIPAA'), to seek payment for works done under the sub-contract which was certified and valued by the architect. The plaintiff's adjudication claim was successful and the adjudicated amount payable by CR Sea to the plaintiff was RM2,529,177.19. As no payment was made by CR Sea, despite being served with a copy of the adjudication decision and demand for payment, the plaintiff, *via* a letter dated 2 June 2022 requested for direct payment of the adjudicated sum, interest and costs from the defendant as the principal of CR

G

H

I

Sea pursuant to sub-s. 30(1) of the CIPAA ('written request'). Upon receipt of the written request, the defendant sent a notice dated 7 June 2022 to CR Sea pursuant to sub-s. 30(2) of the CIPAA ('written notice') for CR Sea to show proof of payment that it had made to the plaintiff within ten working days from the date of the notice, failing which the defendant shall proceed to make direct payment to the plaintiff. On the same date, the defendant wrote to the plaintiff's solicitors refuting any liability to pay the sum as demanded by the plaintiff. CR Sea did not respond to the written notice. Hence, the plaintiff's application for the defendant to make direct payment to the plaintiff, pursuant to s. 30 of the CIPAA, the amount as decided by the adjudicator in the adjudication proceedings between the plaintiff and CR Sea. The issue for the court's determination herein was whether there was money due or payable by the defendant to CR Sea at the time of receipt of the written request on 2 June 2022.

Held (allowing plaintiff's application):

- (1) The defendant was the 'principal' of CR Sea within the meaning of s. 4 of the CIPAA and had fulfilled the conditions under s. 30 of the CIPAA. Following the plaintiff's averment that there was money due or owing by the defendant to CR Sea as at 2 June 2022, the evidential burden was on the defendant to prove otherwise on the balance of probabilities. However, the defendant had not discharged the evidential burden to prove that there was no money due or payable to CR Sea at the time of its receipt of the written request. (paras 20 & 27-29)
- (2) In the written notice, the defendant stated its commitment that it shall make direct payment to the plaintiff upon expiry of ten working days deadline. Under sub-s. 30(3) of the CIPAA, there is a mandatory obligation on the defendant to pay the adjudicated amount directly to the plaintiff if no proof of payment was forthcoming from CR Sea. The defendant could not be allowed to claim that it is attempting to facilitate the direct payment process and then later, to change its stance by giving excuses in not complying with the mandatory obligation under sub-s. 30(3) of the CIPAA. (para 28)
- (3) A proper construct of the term 'adjudicated amount' in s. 30 of the CIPAA would include both interest and costs awarded in the adjudication decision. The court allowed interest on the adjudicated sum at the rate of 5% per annum, but it was to be calculated from the date of the decision of the court until full settlement. (paras 31 & 32)

Case(s) referred to:

Antah Schindler Sdn Bhd v. Maju Holdings Sdn Bhd [2023] 1 CLJ 754 HC (*refd*)

Bond M&E Sdn Bhd v. Pali PTP Sdn Bhd [2022] 5 CLJ 543 HC (*folld*)

Cabnet Systems (M) Sdn Bhd v. Dekad Kaliber Sdn Bhd & Ors [2020] 1 LNS 187 HC (*refd*)

CT Indah Construction Sdn Bhd v. BHL Gemilang Sdn Bhd [2018] 1 LNS 380 HC (*refd*)

Dato' Seri Anwar Ibrahim v. PP [2010] 7 CLJ 397 FC (*refd*)

- A** *Glocal Tech Engineering Sdn Bhd v. Panzana Enterprise Sdn Bhd* [2021] 1 LNS 429 HC (*refd*)
HSL Ground Engineering Sdn Bhd v. Civil Tech Resources Sdn Bhd & Another Case [2020] 1 LNS 526 HC (*refd*)
Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor [2021] 2 CLJ 579 FC (*refd*)
MKP Builders Sdn Bhd v. Turnpike Synergy Sdn Bhd [2021] 1 LNS 1238 HC (*refd*)
- B** *Peck Chew Piling (M) Sdn Bhd v. Panzana Enterprise Sdn Bhd* [2022] 1 LNS 428 HC (*refd*)
R (on the application of Privacy International) v. Investigatory Powers Tribunal and others [2019] UKSC 22 (*refd*)
Zeta Letrik Sdn Bhd v. JAKS Island Circle Sdn Bhd [2022] 1 LNS 427 HC (*refd*)
- C** **Legislation referred to:**
 Construction Industry Payment and Adjudication Act 2012, ss. 4, 30(1), (2), (3), (4)
 Evidence Act 1950, s. 103
 Rules of Court 2012, O. 42 r. 12
- D** *For the plaintiff - Lau Weng Ann; M/s WA Lau & Partners*
For the defendant - Andrew Davis; M/s Andrew Davis & Co
Reported by S Barathi

JUDGMENT

E **Aliza Sulaiman J:**

Introduction

- F** [1] This is an application by the plaintiff for the defendant to make direct payment to the plaintiff pursuant to s. 30 of the Construction Industry Payment and Adjudication Act 2012 (Act 746) ('CIPAA') of the adjudicated amount as decided in the adjudication decision dated 22 March 2022 ('AD') by the learned adjudicator Sr Chine Wai Ting, Jacky ('adjudicator') in the adjudication proceedings between the plaintiff (claimant) and CR Sea (Malaysia) Sdn Bhd (respondent; 'CR Sea').
- G** [2] In the originating summons ('OS'), the plaintiff prayed for, among others, an order:
- H** (1) That the Defendant shall make direct payment of RM2,668,897.25 as principal of CR SEA (Malaysia) Sdn Bhd to the Plaintiff in relation to the Adjudication Decision dated 22-03-2022 in particular paragraphs 57 (a)-(d) as follows:
- I** (a) Adjudicated Sum of RM2,529,177.19;
- (b) Interest at the rate of 5% per annum on the Adjudicated Sum of RM2,529,177.19 from 26.11.2021 until full settlement;
- (c) Legal and incidental costs of RM37,589.00; and
- (d) Costs of the Adjudication proceedings in the sum of RM37,342.55;
- (2) that the cost of this application shall be paid by the Defendant to the Plaintiff; ...

[3] After hearing oral submissions by learned counsels who represented the parties on 10 November 2022, and having considered the cause papers and both the oral and written submissions, the court had, on 24 November 2022, allowed prayers 1 (a) and (2) of the OS. The court also ordered that interest on the sum of RM2,529,177.19 ('adjudicated sum') at the rate of 5% per annum from 24 November 2022 until full settlement and costs of RM5,000, subject to allocatur, be paid by the defendant to the plaintiff.

[4] On 23 December 2022, the defendant filed a notice of appeal against the aforesaid decision. Hereinbelow are my full grounds of judgment.

The Cause Papers

[5] The related cause papers are as follows:

- (i) the originating summons ('OS') dated 19 July 2022 (encl. 1);
- (ii) the plaintiff's affidavit in support ('AIS') affirmed by its Director, Mr. Norman Shazly bin Mohd Daim on 19 July 2022 (encl. 2);
- (iii) the defendant's affidavit in reply ('AIR') affirmed by its Group Legal Manager, Mr. Victor Peh Suan Ean on 11 August 2022 (encl. 5); and
- (iv) the plaintiff's AIR affirmed by the same deponent on 17 August 2022 (encl. 6).

Salient Background Facts

[6] The plaintiff is a private limited company with its registered business address at No. 54-A, 1st Floor, Jalan Cerdas, Taman Connaught, Off Jalan Cheras, 56000 Kuala Lumpur. It is involved in the business of supply and installation of electrical and mechanical services in the building industry.

[7] The defendant is a private limited company with an address at 31st Floor, Menara May, No. 7 Jalan Munshi Abdullah, 50100 Kuala Lumpur. Its business is in real property and housing development.

[8] The defendant is the employer of a housing project known as:

Cadangan Pembangunan 2 Blok Pangsapuri Perkhidmatan 41 Tingkat yang Mengandungi:

- (i) Bilik-bilik Mekanikal & Elektrikal, Kebuk Sampah dan 7 unit Ruang Perniagaan (Aras P1);
- (ii) 1 Tingkat Basemen Tempat Letak Kereta dan Motosikal (Aras P1);
- (iii) 8 Tingkat Podium Tempat Letak Kereta dan Motosikal (Aras P1A-P7A);
- (iv) Tingkat Bawah – Satu Tingkat Kemudahan Komuniti;
- (v) Tingkat 1 hingga Tingkat 35 (700 Unit Kediaman); dan
- (vi) Sebuah Pondok Pengawal

Di atas Lot PT 24012, Mukim Batu, Wilayah Persekutuan Kuala Lumpur ('Project').

- A [9] By a letter of acceptance dated 8 March 2018, the defendant had appointed CR Sea as the main contractor for the project.
- B [10] By the letter of award for nomination of sub-contract – electrical services dated 16 July 2018, the defendant had informed the architect, Messrs SN Low & Associates Sdn Bhd of its intention to nominate the plaintiff as the nominated sub-contractor ('NSC') for the project and requested that the architect issues the architect's instruction ('AI') to CR Sea accordingly.
- C [11] Subsequently, by the letter of acceptance dated 23 July 2018, CR Sea referred to the AI and on behalf of the defendant, had confirmed the award of "The Supply, Delivery, Installation, Testing & Commissioning and Maintenance & Servicing of Electrical Services" for the project to the plaintiff for the firm price sum of RM15 million ('sub-contract').
- D [12] The plaintiff and CR Sea then became entangled in a dispute which ended up with the plaintiff commencing adjudication proceedings against CR Sea pursuant to the CIPAA to seek payment for work done under the sub-contract which was certified and valued by the architect in the progress certificate and valuation nos. 34, 35, 36, 37R, 38 and 41 in the total sum of RM2,529,177.19.
- E [13] In para. 57 of the AD, the adjudicator determined that:
- F a. ... the Claimant's Adjudication Claim is successful and the adjudicated amount payable by the Respondent to the Claimants is RM 2,529,177.19
- G b. Pursuant to subsection 25(o) CIPAA, the Respondent shall pay to the Claimants interest on the adjudicated amount calculated at the rate of 5% per annum on the sum of RM2,529,177.19 beginning on 26th November 2021 and continuing until the adjudicated amount together with interest is paid.
- H c. Legal and incidental costs incurred by the Claimant to be borne by the Respondent, at RM37,589.00 comprising RM35,000.00 legal costs and RM2,759.00 incidental cost.
- I d. Costs of the Adjudication proceedings is to be borne by the Respondent pursuant to Section 18(1) of CIPA Act 2012 in the amount of RM37,342.55 which includes Adjudicator's fees and expenses in the amount of RM30,810.70, and AIAC fees at RM6,531.85 including SST.
- I [14] On 1 April 2022, the plaintiff's solicitors served a copy of the AD on CR Sea and demanded for the payment of the adjudicated sum, interest and costs as determined by the adjudicator.

[15] As no payment was made by CR Sea, the plaintiff's solicitors issued the letter dated 2 June 2022 to request for direct payment of the adjudicated sum, interest and costs from the defendant as the principal of CR Sea pursuant to sub-s. 30(1) of the CIPAA ('written request').

A

[16] Upon receipt of the written request, the defendant sent the notice dated 7 June 2022 to CR Sea pursuant to sub-s. 30(2) of the CIPAA ('written notice') for CR Sea to show proof of payment that it has made to the plaintiff within ten working days from the date of the notice, failing which the defendant shall proceed to make direct payment to the plaintiff. On the same date, the defendant wrote to the plaintiff's solicitors refuting any liability to pay the sum as demanded by the plaintiff.

B

C

[17] CR Sea did not respond to the written notice.

The Plaintiff's Case

[18] The plaintiff's application is made pursuant to s. 30 of the CIPAA which reads as follows:

D

Direct payment from principal

30(1) If a party against whom an adjudication decision was made fails to make payment of the adjudicated amount, the party who obtained the adjudication decision in his favour may make a written request for payment of the adjudicated amount direct from the principal of the party against whom the adjudication decision is made.

E

(2) Upon receipt of the written request under subsection (1), the principal shall serve a notice in writing on the party against whom the adjudication decision was made to show proof of payment and to state that direct payment would be made after the expiry of ten working days of the service of the notice.

F

(3) In the absence of proof of payment requested under subsection (2), the principal shall pay the adjudicated amount to the party who obtained the adjudication decision in his favour.

(4) The principal may recover the amount paid under subsection (3) as a debt or set off the same from any money due or payable by the principal to the party against whom the adjudication decision was made.

G

(5) This section shall only be invoked if money is due or payable by the principal to the party against whom the adjudication decision was made at the time of the receipt of the request under subsection (1).

H

[19] In *Glocal Tech Engineering Sdn Bhd v. Panzana Enterprise Sdn Bhd* [2021] 1 LNS 429; [2021] MLJU 474, this court said in para. 24 of the judgment that:

Proceeding next to the conditions which have to be satisfied before the Plaintiff can invoke the remedy in s. 30 CIPAA, there is an ever-growing body of case law on point (see among others, *Murni Environmental Engineering Sdn Bhd v. Eminent Ventures Sdn Bhd & Anor and other suits* [2016]

I

- A MLJU 691; *CT Indah Construction Sdn Bhd v. BHL Gemilang Sdn Bhd* [2017] MLJU 2275 (HC); *HMN Nadhir (supra)*; *B Cor Geotechnics (supra)*; *Cabnet Systems (M) Sdn Bhd v Dekad Kaliber Sdn Bhd & Anor* [2020] 3 MLRH 83 which are listed in footnote 41 at p. 201 in Lim Chong Fong, *Malaysian Specialist Intellectual Property and Construction Courts: Practice and Procedure*, Sweet & Maxwell, 2020). The conditions are that:
- B (a) there must be an adjudication decision whereby the winning party is entitled to an adjudicated amount which is to be paid by the losing party;
- (b) the losing party has failed to pay the adjudicated amount to the winning party;
- C (c) the winning party has made a written request to the principal for the adjudicated amount to be paid directly to the winning party;
- (d) the principal did not serve a written notice to the losing party to show proof that the losing party has paid the adjudicated amount to the winning party or having served such notice, the losing party has failed to furnish the proof of payment and in any event, the principal did not pay the adjudicated amount directly to the winning party; and
- D (e) there is money due or payable by the principal to the losing party at the time when the principal receives the written request for payment from the winning party.
- E [20] After having perused the cause papers and the written submissions of the parties, the court finds that:
- F (i) there is no dispute that the defendant is the “principal” of CR Sea within the meaning of s. 4 of the CIPAA;
- (ii) the plaintiff has fulfilled the following conditions under s. 30 of the CIPAA:
- G (a) there is an adjudication decision whereby the plaintiff is entitled to an adjudicated amount, which consists of the adjudicated sum, interest and costs, to be paid by CR Sea *ie*, the AD dated 22 March 2022;
- (b) that CR Sea has failed to pay the adjudicated amount to the plaintiff;
- H (c) the plaintiff has made a request for the defendant to pay the adjudicated amount directly to the plaintiff under sub-s. 30(1) of the CIPAA *vide* the written request; and
- (d) the defendant has issued the notice under sub-s. 30(2) of the CIPAA to CR Sea *vide* the written notice requesting that CR Sea to show the proof of payment of the adjudicated amount to the plaintiff within ten working days from the date of the written notice *ie*, 7 June 2022, failing which the defendant shall proceed to make direct payment to the plaintiff upon the expiry of ten working days. In the written
- I

notice, the defendant has also made it clear that it will recover any direct payment amount as a debt or set off from any money due or payable by the defendant to CR Sea pursuant to sub-s. 30(4) of the CIPAA.

A

CR Sea has failed to furnish such proof of payment. However, the defendant did not pay the adjudicated amount directly to the plaintiff as it said it would in the written notice.

B

[21] In view of the above stated findings, and as acknowledged by learned counsel who represented the parties on the hearing date, the only issue which arises for consideration is whether there is a sum of money due or payable from the defendant to CR Sea at the time when the defendant received the written request.

C

The Sole Issue: Whether There Is Money Due Or Payable By The Defendant To CR Sea At The Time Of Receipt Of The Written Request On 2 June 2022

D

[22] In the AIS and AIR, the plaintiff averred that:

- (i) there is money due or payable by the defendant to CR Sea and this belief is premised on the fact that construction works for the defendant's project is still ongoing and there would be money due or payable by the defendant as the employer to CR Sea as the main contractor under the main contract;
- (ii) in cl. 12 of the letter of acceptance for the main contract, the defendant has agreed to release payment directly to all NSC and nominated supplier upon receipt of the payment certificate duly certified by the Architect;
- (iii) as CR Sea did not reply to the written notice, then, pursuant to sub-s. 30(3) of the CIPAA and the defendant's own stance as stated in the written notice, the defendant ought to make direct payment of the adjudicated amount to the plaintiff;
- (iv) the defendant may recover the amount paid as a debt or set off from any money due or payable to CR Sea pursuant to sub-s. 30(4) of the CIPAA;
- (v) the defendant's averment that it is in the midst of referring the dispute that it has with CR Sea in respect of the main contract to arbitration based on cl. 34 of the main contract, is merely a bare assertion unsupported with any proof and in any event, is irrelevant to the sub-contract and has no effect on the defendant's obligation to make direct payment to the plaintiff as provided under sub-s. 30(3) of the CIPAA.

E

F

G

H

I

A [23] Mr. WA Lau, in submitting for the plaintiff, emphasised that the defendant, as the principal, has the evidential onus to prove that there is no money due or payable to CR Sea at the time of the defendant's receipt of the written request. To support his submission, learned counsel referred to s. 103 of the Evidence Act 1950 (Act 56), which provides that "The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.", and to a line of decisions in *CT Indah Construction Sdn Bhd v. BHL Gemilang Sdn Bhd* [2018] 1 LNS 380; [2018] MLJU 471, *HSL Ground Engineering Sdn Bhd v. Civil Tech Resources Sdn Bhd & Another Case* [2020] 1 LNS 526; [2021] 8 MLJ 347, *MKP Builders Sdn Bhd v. Turnpike Synergy Sdn Bhd* [2021] 1 LNS 1238; [2021] MLJU 1473 and *Glocal Tech (supra)*.

D [24] In defending the application, the defendant argued that the defendant had complied with the requisites of sub-s. 30(2) of the CIPAA in having issued the written notice. Furthermore, in the defendant's letter to the plaintiff's solicitor on 7 June 2022, it was made clear that the defendant, in complying with the said statutory provision, was not making any admission of liability. Hence, no adverse inference can be drawn against the defendant for not making the direct payment to the plaintiff.

E [25] Mr. Andrew Davis cited the comprehensive judgments of the Federal Court in *Dato' Seri Anwar Ibrahim v. PP* [2010] 7 CLJ 397; [2011] 1 MLJ 158 and *Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579; [2021] 1 MLJ 750 to draw the attention of the court as to how a statute is to be interpreted. The passage which was highlighted in the former case appears at pp. 437 to 438 and 441 to 442 (CLJ); pp. 193 to 194 and 197 (MLJ) of the law report and it reads:

[68] ...

... In *NS Bindra's Interpretation of Statutes*, (10th Ed), the learned author said as follows (at pp. 373-374):

G A court has to interpret law as it stands. Costello J, in *Abdur Rahman v. Emperor* AIR 1935 Cal 316; (1935) ILR 62 Cal 749 says we have to administer and apply as accurately as lies in our power the precise words of the relevant statutory enactment. It is the duty of the court to construe the provisions of an enactment and to construe them according to the language used. Courts are bound to apply the law as it is made and cannot enter into the question of what it should have been, however, laudable the object behind the latter is. In *Sadananda Pyne v. Harinam Sha* AIR 1950 Cal 179, Their Lordships observed:

I Courts must resist the temptation to change the law under cover of interpretation of law. If they use their power to interpret law, to alter laws which they may not like, and to make new laws which they think should be made, that would be a corrupt use of their power.

The function of the court is to interpret the law and not to amend, modify, or alter it. It cannot add to or subtract words while interpreting it; neither is it competent for any court to imply a provision which is not in the statute for remedying an omission. The court has necessarily to carry out the law as it stands unless it is proved to be *ultra vires* and it cannot rectify an alleged injustice caused by any valid legislative enactment.

A

B

[75] ... In *NS Bindra's Interpretation of Statutes*, (10th Ed), the learned author said (at p. 435):

It is elementary that the primary duty of a court is to give effect to the intention of the legislature as expressed in the words used by it and not outside consideration can be called in aid to find that intention. A statute must be constructed in a manner which carries out the intention of the legislature. The intention of the legislature must be gathered from the words of the statute itself. If the words are unambiguous or plain, they will indicate the intention with which the statute was passed and the object to be obtained by it. When the language of the law admits of no ambiguity and is very clear, it is not open to the courts to put their own gloss in order to squeeze out some meaning which is not borne out by the language of the law.

C

D

Thus, where there is no ambiguity, it is the duty of the courts to construe the plain terms of the statute and give them their legal effect.

E

Whilst the excerpt from the latter case can be seen at p. 708 (CLJ); p. 786 (MLJ) of the law report where the Chief Justice had referred to the recent UK Supreme Court judgment in *R (on the application of Privacy International) v. Investigatory Powers Tribunal and others* [2019] UKSC 22 and stated that:

F

[31] The majority of the UK Supreme Court (Lord Carnwath, Lady Hale and Lord Kerr), essentially decided the case as a matter of statutory construction. Lord Carnwath addressed the ouster clause as follows:

[111] ... Judicial review can only be excluded by 'the most clear and explicit words' (*Cart*, para 31). If Parliament has failed to make its intention sufficiently clear, it is not for us to stretch the words used beyond their natural meaning. It may well be that the promoters of the 1985 Act thought that their formula would be enough to provide comprehensive protection from jurisdictional review of any kind.

G

[26] The defendant additionally argued that it has placed an exclusion in the last paragraph of the defendant's letter to the plaintiff's solicitor on 7 June 2022 as shown in bold below:

H

We refute and deny that the Principal is liable to pay for the interest, adjudicator cost, legal cost and incidental cost totalling RM139,720.06 for the breach of the Main Contractor, CR Sea (Malaysia) Sdn Bhd.

I

- A As for the Adjudicated Sum of RM2,529,177.19, we have already requested the Main Contractor to show all payments proof for the Adjudicated Sum within 10 working days pursuant to section 30(2) CIPAA 2012 in order to determine whether there is payment due to you by the Main Contractor and if so what is the actual sum due. We shall reply once the Main Contractor replied. We appreciate if you could send us a copy of the Adjudicated Decision for our perusal.
- B *Please note that by replying to your Notice of Request and the content of the letter above shall not be taken as an admission of liability of the above Requested Sum on our part. We are attempting to facilitating the direct payment as required by CIPAA 2012.* (emphasis added)
- C [27] To begin the analysis of this issue, the plaintiff has correctly submitted, based on the case authorities as cited earlier, that, following the plaintiff's averment that there is money due or owing by the defendant to CR Sea as at 2 June 2022, the evidential burden then lies on the defendant to prove otherwise with the standard of proof being on a balance of probabilities.
- D [28] In my view, the last paragraph in the 7 June 2022 letter as highlighted above is of no assistance to the defendant in discharging the evidential burden as alluded to earlier by labelling it as an "exclusion". This is because:
- E (i) in its AIR, the defendant merely averred that there is no basis for the plaintiff to claim the sum of RM2,668,897.25 and that the defendant does not owe that amount or any amount to CR Sea (see paras. 14 and 17). Further, the defendant is said to be in the midst of referring the dispute that it has with CR Sea to arbitration, however, no notice of arbitration, correspondence or any document whatsoever was exhibited
- F to support these averments;
- G (ii) in the correspondence prior to the filing of the OS, the defendant never informed the plaintiff or the plaintiff's solicitors that there is no money due or payable by the defendant to CR Sea as at 2 June 2022;
- H (iii) in the written notice, the defendant stated its commitment that it shall make direct payment to the plaintiff upon expiry of the ten working days deadline. As submitted by the plaintiff, the defendant's duty under s. 30 of the CIPAA does not end with the issuance of the written notice. Sub-section 30(3) of the CIPAA is clear in its intent that there is a mandatory obligation on the defendant to pay the adjudicated amount directly to the plaintiff if no proof of payment is forthcoming from CR Sea; and
- I (iv) the defendant cannot be allowed to claim that it is attempting to facilitate the direct payment process and then later, to change its stance by giving excuses in not complying with the mandatory obligation under sub-s. 30(3) of the CIPAA.

[29] In the circumstances, the court finds and holds that the defendant has not discharged the evidential burden to prove that there is no money due or payable to CR Sea at the time of its receipt of the written request.

The “Adjudicated Amount” In S. 30 CIPAA

[30] The plaintiff’s counsel was well aware of the different views taken by the High Court in *Cabnet Systems (M) Sdn Bhd v. Dekad Kaliber Sdn Bhd & Ors* [2020] 1 LNS 187; [2020] MLJU 311 and *Bond M&E Sdn Bhd v. Pali PTP Sdn Bhd* [2022] 5 CLJ 543; [2022] 11 MLJ 58 as to whether the words “adjudicated amount” in s. 30 of the CIPAA include interest and costs as awarded in the AD. It was for this reason that Mr. WA Lau submitted that, if this court was minded to follow its previous decision in *Bond’s* case, the plaintiff prayed that the court awards interest at the rate of 5% per annum on the adjudicated sum from the date of the AD until the date of full payment as such interest is the normal rate of interest payable on a judgment sum in accordance with O. 42 r. 12 of the Rules of Court 2012.

[31] Suffice to say that this court was so minded, for the sake of consistency in its decisions on s. 30 of the CIPAA, to follow the pronouncement in *Bond’s* case (see *Peck Chew Piling (M) Sdn Bhd v. Panzana Enterprise Sdn Bhd* [2022] 1 LNS 428; [2022] 5 MLRH 423, *Zeta Letrik Sdn Bhd v. JAKS Island Circle Sdn Bhd* [2022] 1 LNS 427; [2022] MLJU 392 and *Antah Schindler Sdn Bhd v. Maju Holdings Sdn Bhd* [2023] 1 CLJ 754; [2022] MLJU 3048) and therefore, interest on the adjudicated sum at the rate of 5% per annum was allowed, but it is to be calculated from the date of the decision of the court until full settlement.

[32] As at the date of this grounds of judgment, the Court of Appeal has, on 9 December 2022, decided in the appeals related to *Bond’s* case that a proper construct of the term “adjudicated amount” in s. 30 of the CIPAA would include both interest and costs awarded in the adjudication decision.

Conclusion

[33] Based on the foregoing considerations, the plaintiff’s application was allowed and the decision was pronounced as earlier stated in para. 3 of this judgment.

A

B

C

D

E

F

G

H

I